

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Kilden
121556

FILE: B-209598

DATE: June 1, 1983

MATTER OF: Washington Council of Agencies

DIGEST:

Protest of a proposed sole-source award is sustained where the District of Columbia relies upon its annual appropriation act for authority to award a contract to a particular firm without competition, but the act makes a lump sum appropriation without reference to the matter and the Congressional committee reports indicate only that funds were approved for a particular activity, not a particular contractor. In such circumstances the testimony of the District's representatives that they desired to make award to a particular firm is not evidence of Congressional intent.

In behalf of its member agencies, the Washington Council of Agencies protests the District of Columbia's proposed noncompetitive award of a contract for third party custody services to Bonabond, Inc. Because we do not agree with the District that its annual appropriation act authorizes award on a sole-source basis, we sustain the protest.

Over the past several years the District's Pretrial Services Agency competitively awarded contracts to private organizations to provide third party custody services for individuals awaiting trial in the District. During this same period Bonabond, Inc. also provided these services to the District courts, using funds obtained from private sources and direct Federal grants. Because these sources of funds are no longer available to Bonabond, the Pretrial Services Agency sought to have funds added to its budget for this purpose and designated for award to Bonabond. The District contends that the D.C. Appropriation Act, 1983, Pub. L. No. 97-378, December 22, 1982, 96 Stat. 1925, accomplishes this purpose; the protester argues to the contrary.

The Mayor's fiscal year 1983 budget originally sought \$100,000 for the third party custody program, the same level of support as the prior year, and the District has issued a competitive solicitation for this amount of services in 1983. The procurement of an additional \$100,000 of these services, which is the subject of this protest, has been withheld pending our decision on the matter.

The Mayor requested the additional \$100,000 for "the Third Party Custody Program * * *" in a February 10, 1982 letter to the City Council's Committee on the Judiciary. The Judiciary Committee's subsequent report, designated as "minutes," has attached a budget summary stating that the request of the Mayor "approved herein" includes \$100,000 for a contract "with Bonabond, Inc. to provide third party custody services to the courts."

According to the District, no further specific mention of Bonabond appears in the records of the Council's consideration of this budget request. The District's justification for its 1983 budget request transmitted to the Congress in accordance with Section 446 of the District of Columbia Self Government and Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774, simply identifies a \$100,000 increase over the prior year's budget of \$100,000 for third party custody services without indicating an intended recipient for those additional funds.

In subsequent hearings, the Chairman of the House Subcommittee on Appropriations for the District of Columbia questioned the District's Director of the Pretrial Services Agency about this request for additional funds. During this discussion, the Director stated that the District's needs for third party custody services had increased; he outlined Bonabond's past work in this area and its sources of funds; and he advised that the District intended to award Bonabond a \$100,000 contract from the funds requested for the Pretrial Services Agency. District of Columbia Appropriations for 1983; Hearings Before the Subcommittee on District of Columbia Appropriations of the House Committee on Appropriations, 97th Cong., 2d Sess. 1622-1627 (1982) (statement of Bruce D. Beaudin, Director, Pretrial Services Agency). The District also testified to this same

effect before the Senate Subcommittee on Appropriations for the District of Columbia, indicating that the additional \$100,000 requested for third party custody services was earmarked for Bonabond. District of Columbia Appropriations, Fiscal Year 1983, Hearings on H.R. 7144 Before the Subcommittee on the District of Columbia of the Senate Committee on Appropriations, 97th Cong., 2d Sess. 192-193 (1982) (statement of Bruce D. Beaudin, Director, Pretrial Services Agency).

The House Appropriations Committee recommended funding for the Pretrial Services Agency's full budget request of \$1,485,300, including an increase of "\$100,000 for additional third-party custody services," H.R. Rep. No. 849, 97th Cong., 2d Sess. at 48, 49 (1982). The counterpart report of the Senate Appropriations Committee also recommended the full \$1,485,300 for the Pretrial Services Agency, without reference to third party custody services. S. Rep. No. 548, 97th Cong., 2d Sess. at 39, 40 (1982). The conference report does not mention the Pretrial Services Agency, but includes funding for it within the \$409,242,100 recommended for public safety and justice. H. Rep. No. 972, 97th Cong., 2d Sess. at 6. The Congress then appropriated a lump sum of \$409,242,100 for public safety and justice. D.C. Appropriation Act, 1983, supra.

The Washington Council of Agencies argues that because its members have provided third party custody services to the District over the past several years the District cannot justify its proposed sole-source award of a \$100,000 contract to Bonabond. In the protester's view, the fact that the District has competitively solicited the remainder of its requirements for these services in 1983 is proof that the District's proposed award to Bonabond violates the statutory requirements for competition. The protester also argues that the D.C. Appropriation Act for 1983 does not provide authority for contracting with Bonabond without competition. According to the protester, the references to Bonabond buried in the District's budget request and its testimony at the Congressional hearings constitute merely a request to the Congress for an appropriation and do not evidence a Congressional intent to authorize an exception to the procurement statutes.

The District replies that the D.C. Appropriation Act for 1983 provides ample authority for a sole-source award to Bonabond and that it does not need to rely upon the exception to the requirement for advertising set forth in the D.C. Code, § 1-1110(3), 1981, that permits sole-source awards in appropriate circumstances. In this respect, the District argues that the legislative history of the Appropriation Act shows that both the Council and the congressional committees were specifically advised of the proposed award to Bonabond and that they approved that award when they appropriated an amount which included the requested additional \$100,000.

In determining the meaning of and proper effect to be given to laws enacted by Congress, the courts and this Office generally follow traditional principles of statutory construction. A fundamental principle basic to the interpretation of both Federal and state laws is that all such statutes are to be construed so as to give effect to the intent of the legislature. United States v. American Trucking Association, Inc., 310 U.S. 534 (1940); 38 Comp. Gen. 229 (1958). This intent may be derived from the words of the statute itself, from the "equity of the statute," from the statute's legislative history, and in a variety of other ways. See 2A Sutherland, Statutory Construction, § 45.05. The legislative history of a statute may be examined as an aid in determining the intention of the lawmakers when the statute is not clear, see, e.g., United States v. Donruss Co., 393 U.S. 297 (1969); 54 Comp. Gen. 453 (1974); or when application of the statutory language would produce an absurd or unreasonable result, United States v. American Trucking Association Inc., supra and 46 Comp. Gen. 556 (1966); or if the legislative history provides "persuasive evidence" of what Congress intended. Boston Sand and Gravel Company v. United States, 278 U.S. 41, 48 (1928). Consequently, we would agree with the District that the legislative history may be used in appropriate cases to determine Congressional intent.

However, there is a distinction to be made between utilizing legislative history for the purpose of illuminating the intent underlying language used in a statute and resorting to that history for the purpose of writing into law that which is not there. LTV Aerospace Corporation, 55 Comp. Gen. 308 (1975), 75-2 CPD 203.

The D.C. Appropriation Act for 1983 contains no language that arguably restricts the source for the District's third party custody contracts. Instead, the Act simply appropriates a lump sum for public safety and justice in the District of Columbia without condition or restriction relevant to the instant dispute. Because there is no language in the Act that even touches on the matter, we believe that the Act cannot be interpreted as evidencing a Congressional intent to limit the source of contracting for third party custody services to one particular contractor in contravention of the District's statutes and regulations. Moreover, although the District testified at House and Senate hearings that it intended to award a contract to Bonabond, we see nothing which suggests that the District was not expected to have appropriate sole-source justification for such an award. Certainly, there is nothing in the hearing record which indicates an intention on the part of the Subcommittee to authorize a sole-source award simply by providing the requested funds. In short, we find that neither the Act nor its legislative history provides authority for a sole-source award that cannot otherwise be justified.

In light of our conclusion that the Appropriation Act does not authorize the sole-source award, there is no need to determine whether the City Council had such an intent to limit the source of these services when it approved the Mayor's budget. We note, however, that only the Judiciary Committee, and not the Council itself, expressed any opinion on the matter.

Finally, we note the District's argument that the practices and interpretations of the agencies charged with administering a law may be considered in construing the powers granted to legislative bodies, 2A Sutherland, supra, § 49.05, and that the District's Pretrial Services Agency has interpreted both the Council and Congressional action as a mandate to award Bonabond a contract. We do not agree that we should defer to the Pretrial Services Agency's interpretation of the authority granted it by statute in this case, since that agency's expertise lies in the administration of criminal justice, not appropriation law, which is the subject of the present inquiry.

B-209598

The protest is sustained.

We are by separate letter advising the Mayor of the District of Columbia of this conclusion.

for Milton J. Arolan
Comptroller General
of the United States